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STATE OF DELAWARE  
DEPARTMENT OF STATE

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING NOTICE:	<b>BOARD OF DENTISTRY &amp; DENTAL HYGIENE</b>
DATE AND TIME:	<b>Thursday, October 24, 2013 at 3:00 p.m.</b>
PLACE:	<b>Cannon Building, Second-Floor Conference Room A 861 Silver Lake Boulevard, Dover, DE 19904</b>
APPROVED:	<b>December 19, 2013</b>

**MEMBERS PRESENT**

Blair Jones, DMD, Professional Member, President  
John Lenz, DDS, Professional Member, Secretary  
Lucinda Bunting, DMD, Professional Member  
Brian McAllister, DDS, Professional Member  
Thomas A. Mercer, DMD, Professional Member  
Debra Bruhl, RDH, Hygiene Advisory Member  
Bonnie Thomas, RDH, Hygiene Advisory Member  
Buffy Parker, RDH, Hygiene Advisory Member  
Nathaniel Gibbs, Public Member  
Cheryl Calicott-Trawick, Public Member  
June Ewing, Public Member

**MEMBERS ABSENT**

Joan Madden, RDH, Professional Hygiene Member

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT**

Amanda McAtee, Administrative Specialist II  
Bob Powers, Administrative Specialist II (training)  
Jennifer Singh, Deputy Attorney General

**PUBLIC PRESENT**

Adam Balick  
Dr. Bruce Fay

**CALL TO ORDER**

Dr. Jones called the meeting to order at 3:08 p.m.

**PUBLIC HEARING, RULES AND REGULATIONS - 3:30 P.M.**

**BOARD PRESENT:** Dr. Blair Jones, Dr. John Lenz, Dr. Lucinda Bunting, Dr. Brian McAllister,  
Dr. Thomas A. Mercer, Debra Bruhl, RDH, Bonnie Thomas, RDH,  
Buffy Parker, RDH, Nathaniel Gibbs, Cheryl Calicott-Trawick, and June Ewing

**PUBLIC PRESENT:** Adam Balick and Dr. Bruce Fay

**PURPOSE:** The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 Del.C. 1106(a)(1), proposes to add a new section to its regulations, 12.0, et. al. The proposed addition defines unprofessional conduct within the practice of dentistry and dental hygiene and lists examples of such conduct.

**PRESIDING:** Dr. Blair Jones, Professional Member, President

**DIVISION STAFF:** Amanda McAtee, Administrative Specialist II  
Bob Powers, Administrative Specialist II

**BOARD COUNSEL:** Jennifer Singh, Deputy Attorney General

**COURT REPORTER:** Lorena Hartnett, Wilcox and Fetzer

The hearing began at 3:30 p.m. Ms. Singh stated that the purpose of the hearing was to receive public comment regarding the Board's proposed Rules and Regulations. Ms. Singh advised that the notification of the public hearing was published in the Register of Regulations on October 1, 2013 and two newspapers on September 21, 2013. Ms. Singh marked the News Journal affidavit of publication as Board exhibit one and the State News affidavit of publication as Board exhibit two.

Ms. Singh confirmed that no public comment had been received by the Board office. With there being no comment, Ms. Singh thanked the court reporter and advised the Board that the public would have an additional fifteen days after this hearing date to make comments. The Board would deliberate on any public comments received at its next Board meeting on December 19, 2013.

The hearing adjourned at 3:32 p.m.

**PROPOSAL TO DENY HEARING – Dr. Bruce Fay 3:35 p.m.**

**BOARD PRESENT:** Dr. Blair Jones, Dr. John Lenz, Dr. Lucinda Bunting, Dr. Brian McAllister, Dr. Thomas A. Mercer, Debra Bruhl, RDH, Bonnie Thomas, RDH, Buffy Parker, RDH, Nathaniel Gibbs, Cheryl Calicott-Trawick, and June Ewing

**PRESIDING:** Dr. Blair Jones, President

**BOARD STAFF:** Amanda McAtee, Administrative Specialist II  
Bob Powers, Administrative Specialist II

**DEPUTY ATTORNEY GENERAL FOR THE BOARD:** Jennifer Singh, Deputy Attorney General

**RESPONDENT:** Dr. Bruce Fay

**COUNSEL FOR THE RESPONDENT:** Adam Balick

**PUBLIC PRESENT:** None

**COURT REPORTER PRESENT:** Lorena Hartnett, Wilcox and Fetzer

**TIME STARTED:** 3:35 p.m.

Ms. Singh went on record at 3:35 p.m. The Board members introduced themselves for the record.

Ms. Singh stated that the Board reviewed Dr. Bruce Fay's application for a restricted permit I (RP I) at their meeting on August 15, 2013. After reviewing the application and all supporting documentation, the Board proposed to deny the application as it found that Dr. Fay may no longer be qualified to possess such authorization. Specifically, under 24 Del. C. § 1106(a)(15), the Board had the authority to establish rules and regulations regarding the requirements and standards for permits that authorize a dentist to administer anesthetic agents. In addition, under Board Rule 7.4.4, "The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board to determine if he/she is still qualified to have such written authorization."

Board Rules 7.5.1 and 7.5.2, pertaining to regulation of anesthesia administration further stated that a dentist was required to report all adverse occurrences to the Board within 30 days of such occurrence, and the failure to do so "when said occurrence is related to the use of Conscious Sedation or Deep Sedation or General Anesthesia may result in the loss of such permit...."

The Board determined that Dr. Fay may not be qualified to possess a Restricted Permit I based upon the following factors:

- 1) In April of 2007, Dr. Fay was advised that ketamine is a general anesthetic which is only to be used by dentists trained in the use of general anesthesia and deep sedation, conduct for which he did not possess a Permit to perform;
- 2) Despite this advisement, Dr. Fay administered ketamine to a pediatric patient without consent, and the patient experienced seizures; and
- 3) Finally, Dr. Fay failed to report this adverse occurrence to the Board at any time.

Following the Board's review of his application, Dr. Fay was notified of this Board's proposal to deny his application by letter dated August 19, 2013. After receiving the Board's proposal to deny notice, Dr. Fay timely requested a hearing.

Ms. Singh marked a complete copy of Dr. Fay's RP I application submitted by Dr. Bruce Fay, which included all supporting documentation, and the Board's correspondence noticing Dr. Fay of the proposal to deny decision as the Board's Exhibit 1. Mr. Balick did not have an objection to Ms. Singh marking the packet as Board's Exhibit 1.

Mr. Balick thanked the Board for allowing the chance to appear today. Mr. Balick stated that the allegations that were read into the record were accurate and the Board needed to be aware that Dr. Fay challenged the violations and the discussion was with the drug ketamine and if it could be used with the permit Dr. Fay held. At the time, we produced articles and expert testimony with regards to the use of ketamine with conscious sedation. Dr. Giordano had performed an inspection of Dr. Fay's office and had told Dr. Fay that he could not use ketamine and it was said without the enforcement of the Rules and Regulations. Dr. Fay was under the impression that it was Dr. Giordano's professional opinion and was a suggestion not an order to not use the drug. When Dr. Fay gave the child ketamine, the child had a seizure but it did not result in hospitalization. Mr. Balick stated that an agreement had been reached in the matter that Dr. Fay would serve a year of probation and would not administer ketamine thereafter. To date, Dr. Fay has not used ketamine since the incident and would not use the drug going forward. A consent agreement was reached and the Board rejected the consent agreement.

The prior counsel for the Board had reported that there was not a sufficient penalty. For Dr. Fay's ultimately agreed to pay a \$5000 fine in addition to the probation. In our opinion, that was the sanction for his misconduct.

When his probation ended it was our full expectation to have a RP I issued and were surprised that it was not issued. Dr. Fay entered a consent agreement and he fulfilled that agreement. Mr. Balick disagreed with Ms. Singh and believed that the Board's Rules and Regulations did not allow for the Board to deny a RP I permit to Dr. Fay and that legally he was qualified to hold the RP I permit and there was no reason to not issue the RP I permit. There have been no issues with the medications Dr. Fay had been using and the Board had been given assurances that he would not use ketamine as a protection to the public. Mr. Balick also advised the Board that Dr. Fay would comply with whatever the Board required of him.

Dr. Fay was sworn in by the court reporter, Ms. Hartnett.

Dr. Fay addressed the Board and explained his background which included his dental training and sedation training specifics. Dr. Fay stated that he had begun sedating patients in 1997 and had sedated an average of one patient per week since 1997. During that time he also received informal instruction in ketamine and propofol by other dentists with a background similar to Dr. Giordano. Since Dr. Fay received instruction from well qualified people he was using these drugs like ketamine and propofol for sedation. He never had anything that qualified as an incident except for the pediatric patient that he treated in 2009. Dr. Fay stated that he took an update course back in May of 2012.

Dr. Fay explained to the Board the importance of using anesthesia in his practice to treat certain patients, which included the mentally handicapped.

Dr. Fay stated that the patient in 2009 that had an adverse reaction to ketamine was a mentally handicapped individual. He explained that the patient's mother did not inform his office of the patient's seizure history and the patient was extremely combative in the chair. Dr. Fay explained that the whole incident could have been broken with the use of benzodiazepine however; the mother intervened and would not let him administer the drug. Dr. Fay stated that the mother insisted on obtaining an ambulance. Dr. Fay stated that he had followed up with the patient and was told that he was not hospitalized. Since the patient was not hospitalized Dr. Fay did not classify it as an adverse occurrence to report to the Board and stated that this was one example where he saw an issue with ambiguity in the code. Dr. Fay explained to the Board that he had seen many patients with similar backgrounds and disabilities over the years with no adverse occurrences.

There were members of this Board that believed that ketamine and propofol should not be used and as soon as I was aware I stopped using those drugs. That was different than Dr. Giordano standing in my office and telling me that he felt that it was inappropriate. Dr. Fay stated that he was certain that he could do what he needed to do without using those drugs. Dr. Fay was prepared to be more than reasonable to assure the Board that he was qualified for a RP I permit and he stated that he wanted to get back to doing his work in helping this segment of the community.

Ms. Singh opened the floor to the Board to ask questions.

Dr. Lenz was recused because he was the contact on the underlying complaint

Mr. Gibbs questioned Dr. Fay why the drug was deemed inappropriate

Dr. Fay stated that Dr. Giordano believed that it was inappropriate and that the drug indicated that it was for use for general sedation however, many professionals agree that it could be safely used.

Dr. McAlister questioned under what premise Dr. Giordano spoke to Dr. Fay.  
Dr. Fay stated that it was a site inspection and as Dr. Giordano inspected his drugs, he stated that he did not agree with the use of ketamine. Dr. Petrunich recently inspected my office in July of 2013 and recommended that my RP I permit be issued.

Ms. Calicott-Trawick questioned if anything had been sent in writing to the Board regarding the ketamine other than Dr. Giordano's verbal personal opinion in the office.

Dr. Fay stated that Dr. Giordano sent a letter to the Board which stated that he recommended approval but mentioned that ketamine was being used and advised that it shouldn't be. Dr. Fay stated that he was told he was copied on the letter but he never received a copy. Therefore, Dr. Fay accepted that the letter was written and the Board accepted the approval of his permit without setting conditions upon his permit, such as ketamine could not be used.

The Board went off record at 4:17 p.m. to deliberate.

After deliberation, the Board went back on record at 4:46 p.m.

Ms. Calicott-Trawick made a motion, seconded by Mr. Gibbs, to grant Dr. Fay a restricted permit I. By majority vote, the motion carried with Dr. Lenz recused.

Dr. Fay thanked the Board for their time.

The hearing concluded at 4:47 p.m.

### **REVIEW AND APPROVAL OF MINUTES**

The Board reviewed the minutes of the August 15, 2013 Board meeting. Mr. Gibbs made a motion, seconded by Dr. Bunting, to approve the minutes as presented. By unanimous vote, the motion carried.

### **Board Election**

Dr. Jones made a motion, seconded by Dr. Bunting, to nominate Dr. Lenz for president. By unanimous vote, the motion carried.

Dr. McAlister made a motion, seconded by Mr. Gibbs, to nominate Dr. Bunting for secretary.  
Dr. Bunting declined the nomination, a vote did not occur.

Dr. Bunting made motion, seconded by Mr. Gibbs, to nominate Dr. McAlister for secretary.  
By unanimous vote, the motion carried.

### **Introduction of New Public Board Member June Ewing and Division Staff Member Bob Powers**

June Ewing and Bob Powers introduced themselves for the Board.

### **UNFINISHED BUSINESS**

#### **Continued Discussion on Advertising and Ownership**

#### **James Moriarty Letter – Corporate Ownership**

Dr. Jones stated that advertising and ownership was covered in the statute. Ms. Singh stated that the Board could draft a regulation to clarify it further. Ms. Singh stated that the statute precluded non-dentists from owning dental practices. Dr. McAlister questioned if the language was sufficient.

Dr. Lenz stated that the language did not seem sufficient to him. Dr. McAlister stated that it defined the practice of dentistry but not the ownership of it.

Ms. Singh stated that the practice of dentistry was the key because it opened up non-licensees to unlicensed practice. The definition was equating owning a dental practice with being a licensed dentist. Ms. Calicott-Trawick questioned where a facility like Westside fell under. Ms. Singh stated that the statute exempted non-profits and they were regulated by DHSS. The role simply as owners they were still practicing dentistry and if they were not licensed they were subject to unlicensed practice. If the Board wished to draft a regulation they could further define it.

Ms. Singh stated that she would bring a regulation proposal to the next meeting and would have it on the agenda so the Board could review and vote on it. Dr. McAlister questioned if anyone had looked at what other states had in their statutes. Dr. Jones stated that he had looked through a few states. Ms. Singh stated that the Board could review others between meetings.

#### Review and Consideration of Board Order for Bonnie Foster

The Board reviewed and signed the Board Order for Bonnie Foster.

### **NEW BUSINESS**

#### **RATIFICATION OF LICENSES/PERMITS ISSUED BY DPR SINCE LAST BOARD MEETING**

##### Dentists – None

##### Dental Hygienists

Dr. Bunting made a motion, seconded by Mr. Gibbs, to ratify the dental hygiene licensure of Kimberly Ann Gordon, Irina Bask, Amanda Stevenson, Gretchen Redfoot, Honi-Jo Mathis, and Audrey Starrett. By unanimous vote, the motion carried.

##### Restricted Permit I - None

##### Restricted Permit II

Dr. Lenz made a motion, seconded by Ms. Ewing, to ratify the restricted permit II licensure of Daniel Luckenbaugh and Aesha Chaudhry. By unanimous vote, the motion carried.

##### Unrestricted Permit

Dr. Lenz, made a motion, seconded by Ms. Calicott-Trawick, to ratify the unrestricted individual permit licensure of Eric Spencer (Newark and Middletown Offices) and John Vorrasi. By unanimous vote, the motion carried.

#### Review of Applications for Licensure

##### Dolores Kituskie, Dental Hygienist

Ms. Singh stated that Dolores Kituskie practiced on a lapsed license and was consequently disciplined by the State of Pennsylvania. Ms. Kituskie did not indicate that information on the application. When the Division received her license verification with the discipline history included, the Division requested her to clarify the infraction. Ms. Kituskie provided the reason for her lapsed license was because she had moved; she did not offer an apology for providing misleading information on her application.

Ms. Bruhl questioned if she realized that she had discipline against her license. Dr. Mercer stated that she paid a fine to the State of Pennsylvania for working without a license.

After discussion, Dr. Lenz made a motion, seconded by Dr. McAlister, to propose to deny the dental hygienist application of Dolores Kituskie, because she provided misleading information on her licensure application. The motion carried by majority vote, with Ms. Calicott-Trawick opposed.

Review Hearing Officer Recommendations – None

Dentist Appeal Hearing Recommendation – None

Continuing Education Approval

Orthodontics in the Mixed Dentition – Gordon Honig, DMD 3 CPE

The Board reviewed the continuing education approval application of Gordon Honig for 3 CPEs in the course Orthodontics in the Mixed Dentition. After discussion, Ms. Calicott-Trawick made a motion, seconded by Ms. Bruhl, to approve the course for 3 CPEs. By unanimous vote, the motion carried.

Dr. McAlister stated that moving forward he would be the point of contact for CPE approvals. Ms. McAtee stated that she would send him applications between meetings for review.

Discussion and Review of Meeting and Exam Schedule for 2014

The Board reviewed and approved with the 2014 meeting dates. The Board would meet on December 6, 2013 at 10 a.m. for the calibration meeting at Dr. Bunting's office in Milford, Delaware. Ms. McAtee stated that she would have the examination books available for the calibration.

Discussion on Exam Appeal Continuance Requests/Lauren Biliski appeal no-show

Ms. Singh stated that Ms. Biliski requested a hearing to appeal her dental hygiene exam scores. The hearing was originally scheduled for August 27, 2013 and then was cancelled and rescheduled for September 24, 2013. Ms. McAtee rescheduled the hearing and properly noticed Ms. Biliski of the reschedule date. Ms. Biliski failed to show up for the hearing on September 24, 2013. Ms. Singh stated that she would draft a response to be reviewed at the next meeting that addressed Ms. Biliski's failure to appear for the appeal hearing in which she requested.

Discussion and Review of Current Restricted/Unrestricted Permit Rules and Regulations

Dr. Lenz explained the process that the anesthesia advisory committee followed. Ms. Thomas questioned where the members came from. Dr. Lenz stated that the Board appointed the members.

Ms. Thomas stated that she was a member of the dental hygiene advisory committee, attended Board meetings, and was appointed by the governor. Ms. Bruhl stated that the advisory committee should present to the Board at least once a year.

Ms. Singh stated that she wanted the applicants to be aware of the process by putting the information in the Rules and Regulations. There was one thing in the statute that stated that the Board could define anesthesia in the regulations. The Board agreed to outline the process and would further discuss the topic at the January 2014 meeting.

Discussion of Rules and Regulations Regarding Anesthesia/Anesthesia Advisory Council

Discussion of meeting between Dr. Lenz and DPH representative re: Anesthesia/AAC regulations

Dr. McClure, Ms. Gretchell, Dr. Ray,

Write regulations for general anesthesia and Gretchell has job with how the state should regulate anesthesia

Greg McClure was the director of public health in Delaware

And they are going to determine if this advisory committee is adequate for the job.

Dr. McAlister stated that a few years ago he worked on the legislative committee and the medical side did not have a mechanism for a facility inspection.

Ms. Singh stated that the other concern was there was no regulation for a facility to have unrestricted permit. DHSS is concerned with the practice of a facility to be operated as a surgery center. Ms. Singh stated that the regulations have nothing to prevent that. Ms. Singh stated that this currently involved DPH and the Board should be aware. Tabled and will bring up at the next meeting .

#### Discussion of Setting a Time Limit Between Graduation/Examination and Application

Ms. Singh stated that the Board recently had an applicant apply for licensure that had a large amount of time that had passed since graduating school .....

The Board agreed that three years after graduation would be sufficient amount of time to take the State Board exam after graduation. Ms. Singh stated that she would draft something for the next December 19, 2013 meeting.

### **COMPLAINT UPDATES**

#### New Complaints

09-18-13  
09-19-13  
09-20-13  
09-21-13  
09-22-13  
09-23-13  
09-24-13

#### Dismissed by the Division of Professional Regulation

09-18-12  
09-19-12  
09-20-12  
09-22-12  
09-01-13  
09-06-13  
09-11-13  
09-15-13  
09-20-13

#### Forwarded to the Deputy Attorney General

09-23-12  
09-17-13  
09-21-13  
09-22-13

### **DISCIPLINE AND COMPLIANCE – None**

### **CORRESPONDENCE**

#### Glen Goleburn, DMD – Report in Accordance with Anesthesia Regulations Rule 7.5

The Board reviewed and felt there was no need for further action.



Inquiries Regarding Infection Control Continuing Professional Education (CPE) Requirement

Ms. McAtee stated that she had received numerous questions regarding an infection control course as an OSHA requirement. Dr. Jones stated that there was an OSHA requirement but that was for a facility. Ms. McAtee stated that she had referred inquiries to OSHA's website.

Correspondence from Major Mike Foran, DMD, Dental Corps

Mr. Foran questioned if there was a separate licensing process for members of the military. The Board advised that there was not and all dental applicants would have to sit for the state dental exam.

Correspondence from Laura Dougherty, DDS, President Delaware AGD

Dr. Lenz stated that the Board met with the web designer and it would be an administrative nightmare if the Board accepted their forms for CPE credits. The prior Board Liaison had advised them of form issues and they were unwilling to change them. Dr. McAllister stated that it was much easier to use the AGD transcript than to search through the individual transcripts and for years they had always used the transcripts as proof for continuing education. Ms. McAtee stated that she would contact them to determine if a resolution could be obtained.

**OTHER BUSINESS BEFORE THE BOARD**

**PUBLIC COMMENT**

There was no public comment.

**NEXT MEETING**

The next meeting will be December 19, 2013 at 3:00 p.m. in Conference Room A located on the second floor of the Cannon building at 861 Silver Lake Boulevard, Dover, DE.

**ADJOURNMENT**

There being no further business to discuss, Dr. Bunting made a motion, seconded by Ms. Bruhl, to adjourn the meeting at 6:38 p.m. By unanimous vote, the motion to adjourn carried.

Respectfully Submitted,



Amanda McAtee  
Administrative Assistant II

*The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.*